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U.S. Citizenship
and Immigration
Services

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FILE: WAC 03 005 51856 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to
Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, the petitioner challenges the director's factual and legal analyses. The director's decision could have been more focused and, thus, clearer regarding how the petitioner failed to meet the regulatory criteria. Nevertheless, the director raised legitimate concerns and his decision will be upheld for the reasons discussed below.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below.

On appeal, the petitioner asserts that the director erred in failing to consider the "cumulative effect of contributions and evidence in all the categories." This office consistently holds that a petitioner must show that he has sustained national or international acclaim at the very top level. While the director stated that "the petitioner's reliance on simply meeting a set number of criteria is misplaced," the director further stated that the "submission of documentation relating to at least three of the various kinds of evidence listed" was insufficient. We concur with the latter statement. The evidence submitted to meet any criterion must be evaluated as to whether it is indicative of or uniquely consistent with national or international acclaim.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a research scientist. The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, he claims, meets the following criteria.¹

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner submitted evidence that he received stipends through a junior research fellowship from the Indian Council of Scientific and Industrial Research (CSIR) while studying for his [REDACTED]. In 2002, the petitioner received a [REDACTED] at the Skaggs Institute for Chemical Biology at the [REDACTED] Institute. [REDACTED] Director of the Indian Institute of Chemical Technology (IICT), asserts that CSIR fellowships are awarded to approximately five percent of the students who apply based on national test results.

In response to the director's request for evidence regarding the significance of the above fellowships, the petitioner submitted a letter from [REDACTED] Director of Research at IICT, providing similar information to [REDACTED]'s letter.

The director concluded that every scholar who receives a "nominal grant or stipend from a national institute or agency" cannot demonstrate national or international acclaim. On appeal, the petitioner asserts that the Nobel Prize is the highest award in the field and that any lesser awards should meet this criterion. The petitioner asserts that CSIR fellowships are limited to the top five percent of Indian scholars and that the Skaggs Postdoctoral fellowship selects from the top scholars internationally.

The petitioner is not persuasive. The director only raised the Nobel Prize in discussing the one-time achievement alternative for establishing eligibility. The director then concluded that the petitioner's fellowships were not lesser nationally or internationally recognized awards for excellence in the field. We concur with the director. Academic study is not a field of endeavor, but training for a future field of endeavor. As such, academic scholarships, including stipends, and student awards cannot be considered prizes or awards in the petitioner's field of endeavor. Moreover, competition for scholarships is limited to other students. Experienced experts in the field are not seeking scholarships.

Similarly, experienced experts do not compete for fellowships and competitive postdoctoral appointments. The Skaggs Postdoctoral fellowship, while competitive among international postgraduates, is ultimately a job offer. A job offer, regardless of the prestige of the entity offering the job, is simply not an award for excellence in the field.

Contrary to the petitioner's implication on appeal, failing to consider academic and postdoctoral fellowships as nationally or internationally recognized award does not imply that only a Nobel Prize will suffice. There are lesser international awards and numerous national awards that are not limited to students or postdoctoral

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

researchers and are in recognition of past achievements as opposed to being designed to fund education or employment.

For the reasons discussed above, the petitioner's fellowships cannot serve to meet this criterion.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

The petitioner submitted evidence of membership in the American Chemical Society (ACS). The petitioner initially failed to submit evidence of the membership requirements for this association. The director concluded "the record contains no supportive evidence indicating that there are set rules for membership including rigid standards to join."

On appeal, the petitioner asserts, somewhat contradictorily, that ACS is the largest scientific society in the world and that it has "rigorous criteria for selecting its members." The petitioner specifically asserts that ACS requires a degree in the field, a number of years of experience and nomination by an ACS member. The petitioner asserts "any individual is not allowed membership in ACS, e.g. millions of uneducated and unqualified illegal immigrants, millions of unqualified refugee immigrants, millions of family based uneducated immigrants and millions of unqualified American citizens are **not** allowed to join this prestigious organization." (Emphasis in original.) In support of these assertions, the petitioner submits a membership application for ACS.

The fact that ACS does not accept members from outside the chemistry community does not imply that it requires outstanding achievements of its members. Obtaining a degree necessary for employment in the field and working in the field for a specific number of years are not outstanding achievements. Further, we do not consider nomination from two members of an association with so many members to be an outstanding achievement. As the petitioner himself acknowledges, ACS is a large association, indicative of a professional association that is not limited to those with outstanding achievements in the field.

Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

The petitioner relies on articles that cite his own work. In response to the director's request for evidence demonstrating how these citations set the petitioner apart from others in the field, the petitioner provided additional citations.

The director did not specifically discuss this criterion in the final decision. Rather, the director dismissed the significance of the citations as follows:

Citation of the work of others is expected and routine in the scientific community. An alien does not establish sustained national or international acclaim by demonstrating that his or her work has been cited in print.

On appeal, the petitioner asserts that because evidence of published materials is a separate criterion, citations must be evidence indicative of national or international acclaim. The petitioner notes that the number of citations reflects the impact of the cited article.

We concur with the petitioner that frequent citation is objective evidence of the impact of the cited article. Nevertheless, citations simply do not meet the plain language of this criterion, set forth at 8 C.F.R. § 204.5(h)(3)(iii). While not clearly articulated by the director, articles which cite the petitioner's work are primarily about the author's own work, not the petitioner. As such, they cannot be considered published material about the petitioner. Rather, we will consider the citations as evidence that the petitioner's publication history is consistent with national acclaim pursuant to 8 C.F.R. § 204.5(h)(3)(vi).

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The record reflects that the petitioner was requested to referee articles for *The Journal of Organic Chemistry* and the *Journal of the American Chemical Society*. The requests are both dated April 2002, six months before the petition was filed. In response to the director's request for additional evidence, the petitioner submitted materials from the ACS website regarding peer review. The materials provide:

Reviewing manuscripts is recognized as a professional obligation of scientists who themselves publish in the literature. Authors who repeatedly decline requests to review will be asked to submit their own manuscripts to other journals.

In his final decision, the director stated:

The petitioner has been selected to act as a reviewer for various journals on organic chemistry. The petitioner's participation in judging the work of others researcher[s] appears to have been as one of a number of contemporary and successful research scientists. The information about these events does not indicate that inclusion in the process of judging the work of others was limited to research scientists of extraordinary achievement who have *achieved sustained national or international acclaim and recognition, nor does this evidence* show that the alien is one of a very small percentage who has risen to the very top of his field of endeavor.

(Emphasis in original.) On appeal, the petitioner asserts that the regulations specifically provide that judging the work of others is evidence of national or international acclaim.

While we do not require evidence that the national or international acclaim is required for selection as a judge, we cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. In fact, as demonstrated by the materials quoted above, a failure to perform this responsibility may hinder an ordinary researcher's ability to have his own work published. Thus, peer review is routine in the field; not every peer reviewer enjoys sustained national or international acclaim. Without evidence that sets the petitioner apart from others in his field, such as evidence that he has reviewed an unusually large number of articles, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that the petitioner meets this criterion. Moreover, while the petitioner was requested to review articles prior to the date of filing, the record lacks evidence that he actually did so prior to the date of filing. As such, it is not clear that this evidence relates to his eligibility as of that date. See generally 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

[REDACTED] the director of the petitioner's research group at the Scripps Research Institute, asserts that the petitioner was responsible for "the production of materials that serve as intermediates for the synthesis of a variety of nucleic acid analogues under investigation" in that laboratory. According to Dr. [REDACTED] the petitioner "gradually developped [sic] an experimental competence." [REDACTED] predicts that the petitioner "could extend his activity to the important problems of the synthesis and investigation of the bas-pairing properties of one specific member of that family." [REDACTED] concludes that the petitioner "will eventually develop to a scientist whose competence in synthetic organic chemistry could be an asset to any research group active in that general field." Predictions of future competence do not indicate or imply that the petitioner has already made a contribution of major significance to the field.

[REDACTED] a professor at the Instituto [REDACTED] asserts that at the Scripps Research Institute, the petitioner collaborated in designing and synthesizing nucleic acid structures as alternatives to RNA and DNA. [REDACTED] recent Ph.D. graduate working at the National Cancer Institute, adds that the petitioner "developed new nucleic acid systems (TNA) as alternatives to natural RNA and DNA for genetic information." [REDACTED] explains that TNA analogs are "useful in antisense approach for new drug discovery." [REDACTED] a research scientist at NAEJA Pharmaceuticals, Inc. in Canada, asserts that this work had yet to be published as of the date of filing.

[REDACTED] the petitioner's Ph.D. advisor at Osmania University, asserts that while a Ph.D. student, the petitioner focused on carbohydrates [REDACTED] continues:

In this context, he was the first to synthesize [REDACTED] Disaccharides as new bioactive glycosubstances for life processes. He developed methodologies and synthesized chiral auxiliaries and crown ethers for asymmetric synthesis. [The petitioner] developed a method for the synthesis of chiral spiro acetals through radical cyclizations, which are part structures of several natural products having antibiotic, antifungal and antimicrobial properties. He was the first to synthesize sugar based β -amino acids, which are homo analogs of carbohydrate based α -amino acid natural products and glycopeptides. These are very important compounds for drug modification such as side chain in Polyoxins, Nikkomycins and Taxol, which is an anti-tumor compound and also useful as secondary structures of proteins. The above work was published in reputed international journals such as *Tetrahedron Letters* and *Tetrahedron Asymmetry*.

[In addition, the petitioner] was also actively involved in several industrial projects to synthesize new chemical entities for New Drug Discover. He synthesized several pharmaceutical intermediates, particularly 2,5-disubstituted chiral tetrahydrofurans, which are inhibitors of Leukotriens that play a significant role in inflammatory and allergic responses, including arthritis, asthma, psoriasis, and thrombotic disease. These compounds are in Phase III clinical trials.

The petitioner provides other letters from collaborators and more independent researchers, all providing similar information. [REDACTED] former Senior Director of Chemical Sciences at CytoMed,

which funded the petitioner's work in India, adds that the petitioner and his collaborators filed several patent applications based on this work. [REDACTED] who worked closely with the petitioner at the [REDACTED] Institute, asserts that the petitioner's patented innovations "attracted widespread attention in the field of organic chemistry."

While the director did not clearly address this criterion, he director noted that many of the witnesses had collaborated with the petitioner directly or indirectly and stated that the letters focused more on the petitioner's potential than past accomplishments. The director also concluded that while patents might demonstrate that an inventor meets this criterion, patent applications cannot do so.

On appeal, the petitioner asserts that the director's recognition that the petitioner is "well respected and talented" is sufficient to establish "acclaim." The petitioner also notes that some of the reference letters were not from collaborators and that their opinions are sufficient to meet this criterion.

The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim. Evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

The petitioner submitted two patent applications and two patents listing him as one of between 13 and 19 inventors. While the director erred in concluding that the record did not contain issued patents, we disagree with the director's implication that patents are sufficient. In a case involving a lesser classification, this office has found that a patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 n. 7, (Comm. 1998). Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* In this matter, the petitioner's patents are assigned to [REDACTED]. The record does not contain letters from these companies indicating that they have licensed or marketed the petitioner's patented innovations. Moreover, this work was completed while the petitioner was a Ph.D. student in collaboration with several other individuals. While we do not find that student work can never serve to meet this criterion, a member of the field who has only recently completed his academic training bears a heavy burden of establishing that he is one of the very few at the top of the field including in comparison to the most experienced members of the field. It remains, the impact of these innovations is not documented in the record.

In summary, without objective evidence regarding the significance of the petitioner's patented innovations and his role in this research, the petitioner cannot establish that his Ph.D. thesis work was a contribution of major significance. Further, the letter from [REDACTED] fails to indicate that the petitioner's unpublished (at the time of filing) postdoctoral work constitutes a contribution of major significance.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner submitted evidence that he had authored six published articles at the time of filing. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its *Report and Recommendations*, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition are the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment."

Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." This report reinforces CIS's position that publication of scholarly articles is not automatically evidence of sustained acclaim; we must consider the research community's reaction to those articles.

The record contains evidence that one of the petitioner's articles was cited nine times by coauthors; a second article was cited eight times, five of which were independent; a third article was cited once by a coauthor; a fourth article was cited five times by independent researchers; a fifth article was cited five times by coauthors, and the sixth article was cited four times, three times by independent researchers.

The director did not specifically address this criterion in his decision. On appeal, the petitioner lists his publications and patents and asserts that he meets this criterion.

The petitioner's patents are not scholarly articles and have been considered above. None of the petitioner's articles have been cited more than five times by independent researchers. While self-citation is a normal and expected practice, citations by coauthors cannot demonstrate that the petitioner's work is influential beyond his collaborators. Five independent citations of an article is not evidence that the article is widely cited. As the petitioner's publication history is not consistent with national acclaim, we cannot conclude that he meets this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

The petitioner claims to have played a leading or critical role as a postdoctoral researcher at the Scripps Research Institute. The petitioner's supervisor at that institute [REDACTED] confirms that the petitioner is a postdoctoral researcher at the institute.

We have already considered the petitioner's claimed contributions above. What is relevant when considering this criterion is the nature of the role the petitioner was hired to fill and the national reputation of the employer. While the Scripps Research Institute may have a distinguished reputation, we cannot conclude that every postdoctoral researcher who plays an important role in a laboratory at a distinguished institute plays a leading or critical role for the institute as a whole.

Moreover, we reiterate here that [REDACTED] merely states that the petitioner "gradually developed [sic] an experimental competence." While [REDACTED] predicts that the petitioner "could extend his activity to the important problems of the synthesis and investigation of the base-pairing properties of one specific member of that family," he does not assert that the petitioner has played a leading or critical role for the Scripps Research Institute. Rather, [REDACTED] concludes that the petitioner "will eventually develop to a scientist whose competence in synthetic organic chemistry could be an asset to any research group active in that general field."

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The director noted that the petitioner had not demonstrated that he meets this criterion. As noted by the petitioner on appeal, the petitioner has never asserted that he meets this criterion. We concur with the director that the petitioner has not demonstrated that he meets this criterion. We note that the director does not appear to

have concluded that failing to meet this criterion precludes eligibility; rather, the director correctly concluded that the record lacked evidence to meet this criterion in addition to lacking sufficient evidence to meet the other criteria claimed.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a research scientist to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as a research scientist, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.